

21 WITNESS BARKER: Yes, sir
22 JUDGE WALSTON Hold on You're
23 getting beyond the question again Remember,
24 just try to answer her question Okay? You're
25 elaborating too much at this point. I know it's

0136
1 hard not to Okay?

2 WITNESS BARKER Yes, sir

3 BY MS. BROWN.

4 Q Okay Once you determined that these
5 codes were, in fact, registered by ASAP for
6 Lockhart, and that Lockhart was an ELCS
7 exchange, what happened next?

8 A We attempted to translate calling or
9 traffic so that callers from our exchanges in
10 San Marcos could call, as a local call, 512 384
11 and have that traffic routed over the ELCS trunk
12 group.

13 Q What was the result of that effort?

14 A We received fast busies, and the calls
15 would not complete

16 Q Now, at some point, did CenturyTel
17 begin completing calls to the 384 number over
18 toll trunks?

19 MR MCCOLLOUGH Objection, a
20 leading question

21 JUDGE WALSTON I'll overrule the
22 objection

23 BY MS. BROWN

24 Q You can go forward and answer

25 A The -- I was informed at some point in
0137

1 February that those calls had been -- that they
2 did not -- that they had not completed over the
3 ELCS trunk group, and we were processing those
4 over the toll network

5 Q Did that lead to your March 1 letter?

6 A Yes, ma'am

7 Q You state -- do you have your March 1
8 letter in front of you, Mr Barker?

9 A I do. Yes, I do

10 Q Okay. In that letter, you state,
11 "CenturyTel has been informed that your prefix,
12 NPA NXX 512 384, registered for Lockhart, Texas
13 cannot be accessed over the designated
14 facilities associated with extended local
15 calling service between San Marcos and
16 Lockhart "

17 What information caused you to write
18 that statement?

19 A I was informed by our local -- one of
20 our local managers, Tino Salis, that there had
21 been an effort made to process the calls over
22 the ELCS trunk group and they would not
23 complete, and that the calls were being
24 processed otherwise

25 Q Now, is the Lockhart exchange a

0138
1 CenturyTel exchange?

2 A It is not a CenturyTel exchange

3 Q How does CenturyTel -- what
4 arrangements are there -- excuse me Is it a
5 Southwestern Bell exchange?

6 A Yes, ma'am

7 Q Can you describe briefly how calls --
8 ELCS calls from San Marcos to Lockhart are
9 routed?

10 A The callers in San Marcos -- when
11 dialing Lockhart, the prefixes in Lockhart are
12 accessible through a dedicated trunk group, is
13 my understanding, and the calls are routed from
14 San Marcos over that dedicated trunk group or
15 dedicated ELCS trunk group to Lockhart, and the
16 call is complete through that facility

17 Q At some point, do CenturyTel's
18 facilities end and Southwestern Bell's begin in
19 the routing of that?

20 A Yes

21 Q Where is that? Where does that point
22 where the CenturyTel facilities meet the
23 Southwestern Bell facilities, if you know?

24 A I don't know exactly that point -- the
25 point in which that takes place, but it would

0139

1 be -- I would presume it to be outside of our
2 exchange We would process traffic within our
3 exchange, and then the toll network facilities
4 probably are those of Southwestern Bell

5 Q You said the toll network facilities?

6 A If we're -- excuse me If we're

7 talking ELCS -- the ELCS trunks -- there is a
8 separate trunk group, and I could not tell you
9 physically at what point it becomes Southwestern
10 Bell from CenturyTel I don't know that

11 Q Okay Do you know whether the toll
12 network is a separate network from the ELCS
13 network?

14 A It would be a separate network, yes

15 Q Can you describe for me, Mr Barker,
16 what options CenturyTel has offered to ASAP
17 Paging for the completion of the calls to the
18 512 384 prefix?

19 A First, there was a discussion about the
20 establishment or mention of the October 2nd
21 letter about the establishment of
22 interconnection facilities directly with San
23 Marcos, and that was not desired

24 Another option available would be a
25 reverse billing arrangement which utilizes the

0140

1 toll network And then the introduction of the
2 ELCS calling route became an additional option
3 to consider in this instance

4 Q Can you tell me with respect to reverse
5 billing, what would the charges to ASAP Paging
6 be under that option?

7 A The reverse billing is a negotiated
8 arrangement when established It would be the
9 intrastate access charge, is the tariff charge
10 that would be applicable to calls processed as

11 reverse billing
12 Q Do you have reverse billing agreements
13 with other paying carriers in Texas, to your
14 knowledge?
15 A Yes
16 Q And does the letter of understanding --
17 well, first, did you outline the terms of a
18 reverse billing arrangement in the letter of
19 understanding that was attached to your letters
20 to Mr. Gaetjen?
21 A To Mr. Gaetjen?
22 Q Yes?
23 A Yes
24 Q Did that --
25 A The March 1st letter had a reverse
0141
1 billing letter of understanding attached to it
2 Q Did it refer to -- did it inform ASAP
3 paying that under that option they would be
4 billed the applicable intrastate access tariff
5 rates?
6 A It was mentioned in the draft letter of
7 understanding
8 Q Okay. Do you happen to know what that
9 rate is?
10 A I had made that inquiry about that, and
11 I believe -- my recollection is that it's --
12 He's -- objection
13 MR. MCCOLLOUGH: Objection
14 JUDGE WALTON: Hang on,
15 Mr. Barker. We have an objection.
16 MR. MCCOLLOUGH: The witness,
17 obviously, is indicating that he's speculating
18 at this point. He said he doesn't have it
19 within his personal knowledge, and I object to
20 testimony on the --
21 JUDGE WALTON: Okay. I think
22 we've probably had a lot of testimony today
23 about people's understanding. I think that will
24 go to the weight to be given to it. So you said
25 3 84 cents, Mr. Barker?
0142
1 WITNESS BARKER: I believe it was
2 3.20 or something like that, Your Honor
3 BY MS. BROWN
4 Q Is that a number that you could confirm
5 and report back to us?
6 A Probably not this evening, but I could
7 tomorrow.
8 Q Okay. We'll let you know if we need
9 for you to do that.
10 A Okay.
11 Q Can you describe the option over the
12 ELCS calling routes?
13 A The ELCS calling -- the -- considering
14 the request to open up the prefixes for ASAP, it
15 conceives that callers would be able to access
16 those prefixes and that call would be associated
17 and routed over the ELCS trunks to the
18 respective exchanges that they are registered

19 in, Lockhart, Fentress and Kyle. That is how
20 the call is conceived to be routed and
21 completed.
22 Q Would there be a charge for that call
23 if it could be routed in that manner?
24 A There would not be a charge to the
25 caller, and there are no other charges at this
0143
1 time based -- to the best of my understanding
2 Q Mr. Barker, have you had a chance to
3 look at the document that's been marked as ASAP
4 Exhibit 6?
5 A I'm not familiar with that document
6 Q It's the two-page document I faxed to
7 you earlier today.
8 A Okay. Mrs. Cobb's e-mail?
9 Q Yes.
10 A Yes, ma'am.
11 Q Have you read through those e-mail
12 messages?
13 A Yes, ma'am.
14 Q Have you formed an opinion about the
15 issue of whether -- well, let me ask it -- does
16 this document, in your mind, tell you that
17 Southwestern Bell can complete calls over --
18 calls dated using the 512 384 NPA NXX?
19 Does this series of correspondence tell
20 you whether or not Bell can physically complete
21 those calls?
22 A It's not clear to me from this document
23 that that can occur.
24 Q Can you explain why it's unclear to you
25 from this document?
0144
1 A While it talks about completion of
2 calls that reach a certain tandem, it does not
3 mention or doesn't describe for me how calls
4 would be processed from Lockhart to Austin,
5 which would be between Southwestern Bell and
6 ASAP.
7 Q Does the -- as the correspondence clear
8 in your mind whether the communications are
9 talking about completing the calls over the toll
10 network or completing the calls over the ELCS
11 facilities?
12 A It's not clear to me.
13 Q And why is it unclear to you?
14 A The response by Emily Cobb talks about
15 calls reaching the tandem and being processed
16 through a tandem, but it doesn't discuss --
17 doesn't -- for me, it doesn't appear to discuss
18 how calls are getting to that tandem, and it
19 doesn't seem to answer the question of traffic
20 doesn't address the question of traffic
21 completing associated with the ELCS trunks in
22 Lockhart.
23 Q Okay. Let me phrase a hypothetical to
24 you. Well, let me ask it this way. In your
25 mind, could Mrs. or Ms. Cobb have assumed that

1 these calls were coming in over the toll
2 facilities?
3 A It is possible, I would think
4 Q Does the correspondence address that
5 ELCS from San Marcos to the Austin tandem is
6 over ELCS direct trunks?
7 A It doesn't seem clear to me
8 Q And is that the basis for the lack of
9 clarity in your mind about her response?
10 A Yes, ma'am
11 Q Mr. Barker, have you investigated
12 whether CenturyTel is completing calls to ASAP
13 Paging that are the subject of -- to prefixes
14 that are the subject of an earlier 1995
15 agreement?
16 A I have read that and looked into it,
17 yes
18 Q Is CenturyTel completing calls to those
19 prefixes?
20 A Yes It was a prefix, and, yes, we
21 are
22 MS BROWN. Your Honor, that
23 completes my direct
24 JUDGE WALSTON. Okay
25 Mr McCollough?
0146 MR McCOLLOUGH Thank you
2 CROSS-EXAMINATION
3 BY MR McCOLLOUGH
4 Q Mr Barker, can you hear me, sir?
5 A Yes, sir, I can
6 Q My name is Scott McCollough I'm
7 counsel for ASAP Paging. We've had occasion to
8 meet in the past, have we not?
9 A Yes, we have.
10 Q In your introduction to your testimony,
11 you indicated that from -- I believe, you said
12 1985 to 1995 you were employed by a joint
13 venture between -- I think you said -- GTE and
14 Lufkin-Conroe and Sugar Land?
15 A Yes, sir.
16 Q What was your title?
17 A My title?
18 Q Yes, sir
19 A It was vice president -- well, it was
20 general manager, and in the later years of the
21 business it was vice president and general
22 manager.
23 Q Where was your office, sir?
24 A It was at different locations in the
25 Sugar Land, Texas area
0147 Q So you were physically in Sugar Land?
2 A Yes, sir
3 Q Okay Would it be fair to say that
4 during your tenure there that that company had
5 upwards of 100,000 customers?
6 A Yes, sir
7 Q Okay. Did that company make paging
8 services available in Houston?

9 A Yes, sir
10 Q What numbers did somebody dial to make
11 a page? I don't need to know the specific
12 number, sir The NXXs -- what rate center were
13 they associated with?
14 A Well, there was a wide variety of
15 numbers that we had from a number of different
16 places The callers would dial a 7-digit
17 number, and we structured the network to process
18 calls in that manner
19 Q Okay Well, weren't there Sugar Land
20 NXXs --
21 A Yes, sir, there were
22 Q -- reachable by Houston-calling
23 parties?
24 A Yes, that's true
25 Q Okay And your switch was located in
0148 Sugar Land, wasn't it?
2 A It was, yes
3 Q Okay Now, Sugar Land is not within
4 the traditional local exchange for Houston, is
5 it? It's EAS Correct?
6 A I suppose it would be described like
7 EAS They do have calling into Houston, and I
8 think that it could be described as EAS
9 Q Okay It was mandatory two-way EAS,
10 wasn't it?
11 A Yes
12 Q Mandatory EAS from a user perspective
13 and a routing perspective is very similar, too,
14 if not the same as ELCS Isn't that correct?
15 A Whenever we -- it may be
16 Q But, again, Sugar Land is not within
17 the original Houston dialing area group of
18 exchanges, is it? The only reason it's a quote
19 local call is because of its extended area
20 service arrangement Right?
21 A I believe that's true
22 Q So Houston Metropolitan Paging did not
23 have need of an area-wide calling plan with
24 Southwestern Bell or Sugar Land Tel to make its
25 services available to the Houston paging
0149 customers, did it?
2 A For that, that's right Yes, sir
3 Q Do you have anything to do with
4 Century's Internet operations?
5 A No, sir
6 Q You know that Century does provide
7 Internet access service, doesn't it?
8 A I'm aware of -- yes, we do
9 Q Okay Can you get to your computer?
10 A I have a computer here, yes
11 Q Maybe we can short-cut some of this
12 Do you know what CenturyTel internet service
13 provider customers that live in the San Marcos
14 area -- what number they dial to reach the
15 Internet service?
16 A No, sir

17 Q Do you know whether you provide service in Lockhart?
18 A Internet service?
19 Q Yes, sir.
20 A No, sir. I don't know.
21 Q Okay. How about Dale, Texas? Do you know whether you provide service there?
22 A Dale, Texas?
23 Q Yes, sir.
24 A Yes, sir.
25 Q Yes, sir.
1501 A No, sir. I don't know.
1 A No, sir, I don't know.
2 Q Do you know whether Dale is within the local calling scope of San Marcos?
3 A Did you say "Dale," D-a-l-e?
4 Q Yes, sir.
5 A Yes, sir. I believe it is. I believe it's part of the local calling scope, but I'm not absolutely certain, but I believe that to be true.
6 Q How about Matruhdale?
7 A I believe so.
8 Q Fentress?
9 A I think so.
10 Q Kyle?
11 A In terms of local calling?
12 A Yes, sir.
13 A Yes, I believe so.
14 Q How about Lytton Springs?
15 A I believe Lytton Springs has been mentioned before, too. Yes.
16 Q Okay. And -- well, can you go to CenturyTel's basic web page?
17 A Is it "CenturyTel.com"?
18 Q Yes, sir.
19 A Just a moment, please. Okay. I have it.
20 Q Okay. Click on -- on the left-hand side you will see an option for "Residential." "Residential"? Yes.
21 Q Okay. Let's see. Then click on "Internet."
22 A Yes.
23 Q Are you getting a page where it says "pick our service area"? It may take it time to paint. When it comes up, I would ask you to click on "Texas."
24 A Yes. I have a map, and I can click on "Texas." "Service area," there it is.
25 Q Take a look -- does that particular page that you have --
16 A The page that it called up lists dial-up numbers for towns in Texas.
17 Q Okay.
18 A Access numbers.
19 Q Okay. What number does somebody -- does this page state what somebody in San Marcos should dial in order to get to the Internet service?
20 MS BROWN Your Honor, others of

25 us in the room don't have either a copy of this page or a computer in front of us. I would like to ask Mr. McCollough if he could furnish a copy of what it is and the witness are looking at. JUDGE WALSTON Is this a copy?
2 A Yes.
3 MR. McCollough Yes.
4 (ASAP-7 was marked)
5 BY MR. McCollough.
6 Q Okay. Mr. Barker, I've had the court reporter mark for identification purposes what I will represent to you a person would get if they were to hit "Control P" and then "Enter" on your computer -- in other words, a printout of this particular page in its entirety.
7 Let's just see if we can make sure we have the same thing. I'm doing this just for identification purposes. Does it have a banner at the top entitled "CenturyTel Internet Services"?
8 A Yes.
9 Q And then looking down immediately below "CenturyTel," does it have some "option services" info, "account tools," support, site map, DSL broadband center?"
10 A Yes, sir.
11 Q Okay. In the middle, does it purport to show dial-up availability? Is that what it says, kind of in the middle underneath the banner?
12 A Yes, "dial-up availability."
13 Q Okay.
14 MR. McCollough. It's just somewhat cumbersome due to the fact that the witness is not physically present, but at this time, I think I've adequately authenticated ASAP-7, and I offer it.
15 MS BROWN Your Honor, my copy of ASAP-7 has two additional pages attached to it. It looks like page 1 of 8 and page 8 of 8 and then page 1 of 1. I'm not sure what's being offered.
16 MR. McCollough Oh, I have some extras here. The last one -- this should be removed.
17 MS BROWN The witness can't see what you're holding up.
18 MR. McCollough: Well, he doesn't have it. If you would just look to the very back, that should not be part of it. Okay? Other than that, that is what -- what you see is what would be printed if he were to -- I'm sorry -- the first two pages are what would be printed if he were to hit "Control P" or "Print." The other was for some -- but we can pull those off if we need to.
2 JUDGE WALSTON Just so we're clear, what you're offering --

7 MR. MCCOLLOUGH: It's not the next
8 two pages either. I forgot that that was a
9 different --
10 JUDGE WALSTON: The first two
11 pages of Exhibit 7. Correct? That's correct?
12 That's what you're offering?
13 MR. MCCOLLOUGH: Yes. Pages 1 of
14 2 and 2 of 2.
15 JUDGE WALSTON: Is there any
16 objection?
17 MS. BROWN: Is that what the Court
18 Reporter has? No objection.
19 JUDGE WALSTON: Exhibit 7 will be
20 admitted.
21 (ASAP-7 was admitted)
22 BY MR. MCCOLLOUGH:
23 Q Mr. Barker, what number does somebody
24 in San Marcos dial to get to your Internet
25 services in San Marcos?
0155
1 A Let's see. To be honest with you, I'm
2 not sure that I
3 Q Look on the right-hand side, down near
4 the bottom, in between Rowlett and Sunnyvale
5 A Yes, San Marcos -- 512 393 5555
6 Q Okay. Look on the other column, just a
7 little bit more than half-way down, and tell me
8 what number somebody in Lockhart would dial to
9 get to the Internet services?
10 A 512 393 5555
11 Q The same number -- right -- as for San
12 Marcos?
13 A Yes, sir.
14 Q Okay. And Pentress?
15 A Pentress, 512 393 5555.
16 Q And Kyle?
17 A 512 393 5555.
18 Q Do you know whether CenturyTel has
19 modem equipment in Lockhart?
20 A I don't know.
21 Q Okay. I need you to go somewhere else
22 on the CenturyTel Web site, sir. If you would
23 go back to the main page, we can start there.
24 A Okay. I'm back to centurytel.com.
25 JUDGE WALSTON: Hang on just a
0156
1 second, Mr. Barker. Mr. McCollough is looking
2 for a document.
3 A I'm at centurytel.com.
4 MR. MCCOLLOUGH: Hang on just a
5 second.
6 A Sorry.
7 Q While I'm walking around handing out
8 the next exhibit, do you know whether CenturyTel
9 provides paging services? Do you know whether
10 CenturyTel provides paging service?
11 A Not to my knowledge.
12 (ASAP-8 was marked)
13 BY MR. MCCOLLOUGH:
14 Q Do you know whether CenturyTel provides

15 security services?
16 A Yes, CenturyTel provides security
17 services.
18 Q Okay. Are you back at your main page?
19 A Yes, sir.
20 Q Look on the left-hand side where they
21 give you the option for "residential."
22 A Yes.
23 Q Click on "security."
24 A Okay.
25 Q Does it purport, then, to say that
0157
1 CenturyTel does indeed provide security
2 services?
3 A Yes, sir.
4 Q Okay. I'm sorry for bouncing back and
5 forth. Go back to your main page again.
6 A Okay.
7 Q And I want you to click on "customer
8 care." Do you see that option up on the banner,
9 right after "services"?
10 A Yes, sir.
11 Q Okay. Click on "customer care," and
12 click on "FAQ" for "frequently asked questions."
13 A Okay.
14 Q And then click on "security."
15 A Yes, sir.
16 Q Okay. Are you with me?
17 A Yes, sir.
18 Q Scroll down almost to the very end of
19 that Web page.
20 A Okay.
21 Q Do you see an indication about paging
22 right there? And then I'm going to ask you to
23 stop -- just whether you see it?
24 A I see it.
25 JUDGE WALSTON: So which one are
0158
1 we on now, the "frequently asked questions"
2 page?
3 MR. MCCOLLOUGH: Yes, sir.
4 BY MR. MCCOLLOUGH:
5 Q Okay, sir. I'm going to represent to
6 you that the Court Reporter has premarked an
7 exhibit which reflects what happened when I
8 printed the "frequently asked questions" page
9 that you're at right now.
10 A Yes, sir.
11 Q Let's see if we can't work through it
12 just to validate it on the top. It says
13 "CenturyTel." And then going from left to
14 right, can you see at the very very top "Options
15 for my account, hot topic, jobs, and home?"
16 A Yes, sir.
17 Q Okay. Is there a picture there of a
18 lady smiling?
19 A Yes, sir.
20 Q Okay. Right below that, does it say
21 "FAQ?"
22 A Yes, sir.

23 Q And then underneath "that, does it say
24 "home" customer care? "A security"
25 A Yes, it does
1 Q Okay And then lock down to where the
2 "Qs" are
3 A Yes
4 Q The 5th question, "Does CenturyTel
5 offer paging service?" Do you see that?
6 A Yes, sir
7 Q Okay Continuing down, do you see any
8 indication of a place that people would call in
9 Texas? And please don't state this yet, but do
10 you see an indication of a number to call in
11 Texas?
12 A Yes, sir Let's see Yes, sir, I do
13 MR MCCOLLUM I offer ASAP-8.
14 MS BROWN Your Honor, I assume
15 that the purpose for offering this is to show
16 that CenturyTel offers paging service?
17 MR MCCOLLUM Yes
18 MS BROWN I think that -- would
19 you -- I have no objection
20 JUDGE WALTON Okay Exhibit B
21 will be admitted
22 (ASAP-8 was admitted)
23 BY MR. MCCOLLUM
24 Q Okay So continuing on with this
25 document, does it indicate that there is a
1 number that people in San Marcos can call it
2 they have questions about getting security
3 services?
4 A Let's see Yes, sir I see an 800
5 number
6 Q It's an 888 number
7 A An 888 number
8 Q Do you see at the very bottom of the
9 Web page that you're looking at the question,
10 "Does CenturyTel offer paging services?"
11 A Yes, sir, I do
12 Q And what is the answer?
13 A "Yes CenturyTel offers both alpha and
14 numeric pagers Customers can select either
15 local (statewide) or nationwide coverage Call
16 your local CenturyTel security office for more
17 information"
18 Q Okay And, again, the local CenturyTel
19 security office that's indicated would be those
20 that are at the first part of the page, Monroe,
21 Louisiana, Shreveport, Lorton, Olive Branch and
22 San Marcos?
23 A I would assume that to be so, yes, sir
24 Q Okay I think it was a little unclear
25 in your direct examination Do you now agree
1 that ASAP's features and Kyle numbers are listed
2 in the local exchange routing guide or the LRG?
3 A Information provided indicates that
4 there is 512 265 is registered for Fortress, 512

5 580 is registered for Kyle, and 512 384 is
6 registered for Lockhart
7 Q Okay By the way, CenturyTel provides
8 service to ISPs, doesn't it? If an ISP wanted
9 some local connections, would the ability to
10 receive calls from San Marcos customers --
11 A Yes, sir I would think ordering
12 dial-up lines from customer service -- yes, sir
13 I would think that, definitely
14 Q When CenturyTel -- when one user in San
15 Marcos that gets service from CenturyTel calls
16 another CenturyTel San Marcos user, you don't
17 assess toll charges on them, do you?
18 A When one CenturyTel user calls another
19 CenturyTel user and both of them are in San
20 Marcos, no, sir, we do not There is not a toll
21 charge
22 Q Okay And when a CenturyTel user in
23 San Marcos calls a customer in Lockhart with a
24 Lockhart NXX, you don't impose long distance
25 charges on them, do you?
1 A No, sir Those calls would be
2 routinely routed through ELCS-type facilities
3 and service No, sir
4 Q Okay CenturyTel and Southwestern Bell
5 are connected to each other, are they not?
6 You-all have some interconnection trunks?
7 A Yes, sir
8 Q Of various types?
9 A Yes, sir
10 Q Do you know what kind of facilities
11 they are?
12 A In terms of --
13 Is it fiber --
14 A No, sir I don't know the nature of
15 the facilities, whether they are copper or fiber
16 or whatever.
17 Q Okay I think you testified in your
18 examination that, to your best knowledge -- and
19 this is my word -- the "meet point" between
20 CenturyTel and SBBT is somewhere outside of your
21 San Marcos exchange boundary?
22 A I'm not certain of that I'm not
23 certain of exactly where one stops and one
24 begins --
25 Q Okay
1 A -- of facilities
2 Q Okay In terms of the ELCS trunks, do
3 you know, physically, where they go? In other
4 words, do you know whether they go through
5 Austin on the way to San Marcos?
6 A Not with certainty I just know the
7 designation of the functionality or utilization
8 It's my understanding that we have designated
9 trunk groups -- trunk group or trunk groups for
10 ELCS trunks
11 Q Okay So you just know that you have
12 switch appearances for ELCS trunks Is that

13 what you're telling me?
14 A Yes, sir
15 Q Okay So do you know whether these
16 ELCS trunks go to Southwestern Bell's Austin
17 Greenwood tandem?
18 A I'm not certain of which tandem they go
19 to.
20 Q Oh, so you do know that they go to a
21 tandem?
22 A Yes I would certainly think that --
23 well, I would think they probably do, but I'm
24 not certain of that I think information has
25 been shared recently to indicate that it does go
0164
1 to a tandem
2 Q Okay Do you know whether, if they go
3 to a tandem, they would be switched by that
4 tandem?
5 A I would think so. I'm not certain To
6 be honest with you, it would be -- I guess it
7 would be conjecture on my part to presume how
8 Southwestern Bell would handle their facilities
9 Q Okay But it wouldn't surprise you to
10 learn, if you were to learn, that these ELCS
11 trunks actually go to a Bell tandem and are
12 switched by that tandem and then routed to
13 whatever destination?
14 A Yes, sir It wouldn't surprise me to
15 hear that
16 Q If Southwestern Bell has properly
17 entered the instructions in its tandem to
18 recognize calls destined to ASAP's Lockhart
19 number so that a switching instruction is sent
20 to route the calls over to ASAP rather than to
21 the City of Lockhart, that would be technically
22 feasible, wouldn't it? If you don't understand
23 the question, that's fine.
24 A Could you restate that, sir?
25 Q Sure If Southwestern Bell were to
0165
1 open ASAP Paging's Lockhart code in its tandem
2 switch, wouldn't you agree with me, then, that
3 absent some other problem, those calls would be
4 routed by Bell's tandem to ASAP Paging's
5 interconnection trunks if these ELCS trunks do
6 go to the tandem and are tandem switched?
7 A Yes The calls that reach the tandem
8 that is associated with the ASAP trunking, I
9 would think, yes, they -- if the question is
10 "would they" or "would I think they would
11 complete," I think they would
12 Q Well, there are certain things that
13 CenturyTel had to do at its end -- correct -- to
14 try to put these on the ELCS trunks?
15 A Yes, sir I couldn't speak
16 specifically, but, conceptually, we would need
17 to translate our switch so as to route calls to
18 that prefix over a designated trunk group
19 Q Okay. Do you know whether you-all did
20 that with the designated trunk group of AM

21 384192'
22 A I do not know that, sir
23 Q Do you know whether you ever tried?
24 A No, sir, I do not
25 Q You testified that the toll calls go
0166
1 over a different network than ELCS calls Do
2 you recall that testimony?
3 A Yes, sir
4 Q You didn't mean that there was an
5 entirely physically separate network in
6 completely different facilities, did you? You
7 really just meant different trunks groups.
8 Right?
9 A I guess in terms of -- I intend to use
10 that interchangeably and think of them because
11 they are functionally separate to think of them
12 as a local network in a toll network, but I also
13 think of them as trunks as well
14 Q Okay So it is possible -- and let's
15 just assume for a minute this goes over fiber
16 It's possible that the ELC trunk groups ride in
17 the same fiber pair as the toll trunk groups,
18 isn't it?
19 A I couldn't speak to that, honestly I
20 don't know
21 Q Do you know how many different
22 connections you have to Bell?
23 A No, sir, not the number of different
24 connections to Bell from the San Marcos switch
25 I don't know the total number It's my
0167
1 understanding that we have ELCS-type trunks We
2 have toll trunking, and there may be others
3 Q Okay It wouldn't surprise you to
4 learn that all of that rode over, perhaps, the
5 same ultimate facility, whether it be copper or
6 fiber, would it, that you've defined trunk
7 groups within the facility?
8 A Yes, sir It wouldn't surprise me
9 Q You testified that you offered reverse
10 billing arrangement to ASAP Do you recall that
11 testimony?
12 A Yes, sir
13 Q I believe you described it as a draft
14 document I think you even mentioned the word
15 "negotiate"
16 A Yes, sir
17 Q Was the reverse billing arrangement
18 really subject to negotiation?
19 A Well, the agreement was offered up I
20 consider it a negotiation Now, obviously, if
21 someone wants to change documents, we need to
22 discuss the basis for those and then determine
23 if there is a valid basis for the change
24 So in that sense, I consider it
25 negotiated
0168
1 Q Okay Well, let me just ask you a
2 couple of things about the likelihood of certain

19 Q Okay. Like Feature Group D?
20 A I'm not certain
21 Q You don't know?
22 A I would have to go back and ask one of
23 our tariff folks. The interstate access tariff
24 rate that is used here, I'm not sure of a
25 further description

0173

1 Q Okay. Would it have been the
2 trunk-side rate like Feature Group B or D, or
3 would it have been the line-side rate like
4 Feature Group A?

5 A I can't answer the question. I don't
6 know the answer.

7 Q There are differences in charges as
8 between Feature Group A and Feature Group D,
9 aren't there?

10 A I would think there would be.

11 Q Okay. If ASAP Paging had said, "Well,
12 okay. Look, we're willing to consider paying
13 you something for this traffic -- in fact, even
14 Lockhart, but we don't like your access rates.
15 We want you to give us a different and lower
16 rate."

17 Do you think Century would have agreed?

18 A I would think that since our rates --
19 the tariffed rate was supported by cost
20 information, I doubt it.

21 Q Okay. Does Century have a reverse
22 billing arrangement with Celco Partnership?

23 A I'm not certain of that. I've never
24 read anything and recognized that name. Did you
25 say Belco?

0174

1 Q No, sir, Celco Partnership.

2 A I'm not aware of -- there may be, but
3 I'm not aware of that.

4 Q Okay. Do you know whether the Celco
5 Partnership has interconnection to your San
6 Marcos tandem?

7 A I believe that -- I saw that in the
8 documents you provided to me.

9 Q Okay. Did you notice that they had
10 Austin numbers?

11 A Yes, sir, I see that.

12 Q Okay. In that situation where you have
13 Austin numbers hanging off of a San Marcos
14 tandem, would reverse billing be indicated
15 there?

16 A It looked like it could -- from the
17 information that you provided, it looks like it
18 could be a reverse billing arrangement.

19 Q But you don't know whether you do, in
20 fact, have --

21 A No, sir. I'm not aware of that.

22 Q Okay. Sprint Spectrum also hangs off
23 of your San Marcos tandem.

24 A Uh-huh.

25 Q Did you notice that they have Austin

0175

1 numbers as well that are home to your tandem?

2 A Yes, I see that.

3 Q Okay. Do you have a reverse billing
4 arrangement with Sprint Spectrum?

5 A Not to my knowledge.

6 Q Okay. Are you aware of any Lockhart
7 NXXs that home to your tandem?

8 A Not to my knowledge.

9 Q Okay. So -- well, strike that. Do you
10 have a reverse billing arrangement with Dobson
11 Cellular Systems?

12 A Not to my knowledge.

13 JUDGE WALSTON: Mr. McCollough, I
14 mean, ask the questions you need to ask, but I'm
15 not following exactly how these are relevant to
16 this hearing. I don't want the hearing to turn
17 into a process of a deposition --

18 MR. MCCOLLOUGH: I understand.

19 I'm fixing to go right there.

20 BY MR. MCCOLLOUGH:

21 Q Did you notice from the materials I
22 gave you, sir, that Dobson Cellular hangs off of
23 SWBT's tandem -- their access tandem in Austin
24 and has Lockhart numbers associated with it?

25 A One moment, please.

0176

1 MR. STEWART: Your Honor, may I
2 ask if we're -- are we referring to a particular
3 exhibit and --

4 MR. MCCOLLOUGH: No, I'm not
5 going to mark this.

6 A I'm not seeing Dobson.

7 BY MR. MCCOLLOUGH:

8 Q Off of the SWBT tandem?

9 A I'm not seeing it, but I may just be
10 missing it in the pages here.

11 Q Try Page 2 of 6, about a third of the
12 way down.

13 A Page 2 of 6. Yes, sir, I see it.

14 Q Okay. So Dobson Cellular has Lockhart
15 numbers that hangs off of SWBT's Greenwood
16 tandem. You don't know whether you have a
17 reverse billing arrangement with Dobson
18 Cellular?

19 A I'm not aware of a reverse -- no, sir.
20 I'm not aware of reverse billing arrangement
21 with Dobson Cellular.

22 Q But you would have been the one to
23 negotiate such a document, wouldn't you?

24 A Well, if it happened since June of
25 2000, it would be -- it would be me.

0177

1 Q In your March 1st letter to

2 Mr. Gaetjen --

3 A Yes, sir.

4 Q -- the next-to-the-last paragraph of
5 the second page --

6 A Yes, sir.

7 Q -- you say here that, "This letter is
8 noticed that ASAP Paging must enter into a

9 reverse billing arrangement or Century will have
10 to start assessing toll." Do you see that?
11 A Yes, sir, I do.
12 Q Okay. What I don't understand here
13 is -- I thought I heard you say in your
14 testimony that ASAP had three options. You
15 appear to really just be giving us the reverse
16 billing arrangement for toll. What happened to
17 the other two options?
18 A As we went through the process here --
19 of my understanding -- I was not -- I guess I
20 couldn't be clear in my understanding of the
21 field of options based on ASAP's network that
22 they might want to subscribe to.
23 In this instance, I was trying to
24 represent what I felt like I understood, and
25 that we were -- and I had information that

0178
1 indicated we were processing calls over the toll
2 network as reverse billing. And so that's what
3 I was trying to speak to.
4 I didn't mean to imply other options
5 may not be on the table.
6 Q Okay. Thank you. Does CenturyTel take
7 a position that ASAP must have some kind of
8 written agreement with CenturyTel before it will
9 process calls from San Marcos users to ASAP's
10 Lockhart numbers?
11 A No, sir. We just feel that a written
12 agreement is in the best interest of the
13 parties.

14 MR. MCCOLLUGH: If I can have
15 just a second, Your Honor. I'm just about done.
16 JUDGE WALSTON: Sure.

17 BY MR. MCCOLLUGH:
18 Q Does CenturyTel take a position that
19 ASAP Paging must establish some kind of direct
20 interconnection with CenturyTel?
21 A No, sir. It's an option.
22 Q You agree with me, don't you, that
23 state commissions are the ones that determine
24 the boundaries for toll free calling scopes,
25 such as extended local calling service?

0179
1 A They certainly can be, yes, sir.
2 Q Well, for reciprocal compensation
3 purposes, doesn't the FCC defer to the state
4 commissions to define what's a local call, with
5 one exception --
6 A I don't --
7 Q -- except for Internet?

8 MS. BROWN: Your Honor, if
9 Mr. McCollough can leave out the argument and
10 just ask the fact questions, I think we'll be
11 done quicker.
12 BY MR. MCCOLLUGH:
13 Q For reciprocal compensation purposes,
14 doesn't the FCC defer to the state
15 determinations of what a local call is?
16 A I'm not certain of that answer. I

17 would think so. I mean, I think it's possible
18 Q Well, you've negotiated interconnection
19 agreements with, for example, CIECs, have you
20 not?

21 A Yes, sir.
22 Q And have you included the definition of
23 "local?"
24 A Yes, sir, we did.
25 Q And, typically, is it not, basically,

0180
1 referenced to your local calling areas as set
2 out in state tariffs?

3 A Yes, sir.
4 Q Reverse billing arrangements are not
5 required by law, are they? In other words, you
6 don't have to offer one. Correct?

7 A I'm not certain in terms of law. We
8 do -- that is an option that is available to
9 paging carriers.
10 Q Well, I understand. But CenturyTel
11 could decide to no longer offer such a service,
12 couldn't it?

13 A I think so. I think that's true.
14 MR. MCCOLLUGH: I pass the
15 witness, Your Honor.
16 (Brief recess)

17 CROSS-EXAMINATION

18 BY MR. STEWART:

19 Q Mr. Barker, can you hear me?

20 A Yes, sir.

21 Q This is Roger Stewart. I'm with the
22 Commission Staff --

23 A Yes, sir.

24 Q -- and wanted to ask you a few
25 questions to help me and Staff understand what

0181
1 is going on here.

2 A Okay.

3 Q What -- oh -- and, first, if I may ask,
4 before you make reference to anything, if you
5 would please mention to me that you would like
6 to make reference to something, whether that be
7 an exhibit or the Internet or something else,
8 otherwise, I trust you will just tell me based
9 on your knowledge. Is that okay?

10 A Yes, sir.

11 Q Okay. Thank you. CenturyTel offers --
12 I gather from what we've heard today that
13 CenturyTel offers Internet services.

14 Can you tell me -- do you know whether
15 that's offered by the same CenturyTel that is an
16 ILEC in San Marcos, or is that offered by some
17 other entity named "CenturyTel" that may be,
18 say, an affiliate?

19 A It's my understanding that it's a

20 different entity.

21 Q And do you know what the name of that
22 entity is, or what its relationship is with
23 CenturyTel, the ILEC in San Marcos?

24 A I don't know the name -- the exact

25 corporate legal name

0182

1 Q Do you know if a CenturyTel affiliate
2 CLEC is involved in the provision of Internet
3 services by any of the CenturyTel companies?

4 A I don't know the answer to that

5 Q Do you know who might know -- for
6 example, if Mr. Navarrette might know?

7 A I'm not sure if Mr. Navarrette knows

8 Q Okay

9 A We -- there are, obviously, other
10 people in the organization here at CenturyTel
11 that would know.

12 Q Okay. A little early -- it was marked
13 as ASAP Exhibit 7. So you may look at that if
14 you wish to.

15 A All right. That's Ms Cobb's e-mail?

16 Q Oh, I'm sorry. Actually, you may not
17 have it because Mr McCollough simply walked you
18 through the CenturyTel Web site It was the
19 dial-up availability Web site

20 Let me refresh your memory -- that for
21 a number of -- they are marked as "Cities." I
22 don't know whether that matches up with
23 exchanges or not -- but such as Lockhart and
24 Kyle for which the access number is 393 5555
25 just as for San Marcos

0183

1 Do you know what exchange -- can you
2 tell me what exchange 512 393 is associated with
3 according to the LERG, for example?

4 A One moment, please

5 Q May I ask you if you're referring to a
6 particular document?

7 A I was going to -- one reference was --
8 could be the reverse billing arrangement that
9 listed the prefixes that CenturyTel has in San
10 Marcos I do see in Exhibit 1 of the reverse
11 billing letter -- draft letter of understanding
12 that it lists 393 as a prefix for San Marcos

13 So I take that to be an indication that
14 it's registered in the LERG for San Marcos

15 Q Are you fairly certain about that? I
16 hear some hesitation I just -- I guess I can
17 ask Mr. Navarrette.

18 A I think Mr Navarrette can confirm
19 that

20 Q Okay

21 A We're talking 512 393?

22 Q Correct Yes, sir

23 A Yes, sir

24 Q Okay. In terms of something -- I'm not
25 sure I understood it entirely -- a discussion

0184

1 earlier about -- one possible arrangement would
2 be direct ELCS trunks from CenturyTel in San
3 Marcos to, for example, Lockhart -- direct ELCS
4 trunks. Was that something that you were
5 referring to -- discussing earlier as a possible
6 solution for ASAP?

7 A The use of the ELCS trunks -- we did
8 agree to process traffic to 512 384, which is

9 the Lockhart registered in the LERG for

10 Lockhart We did agree to process that over the
11 ELCS trunks for calling -- for local calling

12 Q Let me rephrase I'm not asking my
13 question well Did you discuss as a possibility
14 direct ELCS trunks from CenturyTel in San Marcos
15 to the ASAP switch in Austin?

16 A No, sir

17 Q Or to the ASAP Paging terminal in
18 Austin?

19 A No, sir

20 Q When you mentioned "direct ELCS
21 trunks," were you referring to direct ELCS
22 trunks from CenturyTel San Marcos to the SWBT
23 access tandem in Austin?

24 A I was referring, sir, to the existing
25 ELCS trunks between San Marcos and Lockhart, but

0185

1 that would be between Southwestern Bell and
2 CenturyTel

3 Q Okay One thing that I don't think I
4 quite got about that would be -- what the cost
5 could be to ASAP

6 A If we were able to complete calls and
7 process traffic to 512 384 over the ELCS trunks,
8 there was no other cost, to my knowledge

9 Q Okay I may have misunderstood. I
10 thought we possibly had, yet, another possible
11 solution here, but that sounds very much like
12 what ASAP was asking for

13 Mr Barker, do you know if at any time
14 before April 2nd CenturyTel customers --
15 subscribers in San Marcos had to dial 1-plus to
16 reach 512 384 numbers?

17 A I'm not aware of that being a toll call
18 prior to that

19 Q Do you know what all changes were made
20 in the CenturyTel switch in San Marcos were --
21 what changes were made on April 2nd?

22 A My understanding is that calls to 512
23 384 were changed to -- they are now -- at that
24 point they became a toll call from San Marcos
25 users

0186

1 Q I apologize And perhaps you're not
2 the technical detail expert, and nor am I, which
3 is why I'm asking it inartfully I was hoping
4 you could tell me what sort of -- with some
5 technical detail what sort of software changes
6 were made by CenturyTel in its San Marcos
7 switch

8 A No, sir, I cannot tell you that

9 Q Okay Perhaps Mr Navarrette will be
10 able to do that Okay Another avenue -- would
11 you be able to tell me or tell me as much as you
12 could about how a call flow or a call path --
13 whatever the proper term is -- if a Southwestern
14 Bell customer -- subscriber in Lockhart -- made

15 a call to a San Marcos CenturyTel "customer, can
16 you describe to me what that path would be as
17 much as you know?"
18 A Yes, sir. Conceptually, I visualize
19 the Southwestern Bell wireline customer picking
20 up the phone and they would dial a 7-digit
21 number that would be a San Marcos number.
22 Southwestern Bell would process that
23 call through their switch onto the designated
24 EICS trunk group, and it is a separate trunk
25 group -- well, it is for us and I would say that
1 it is for Bell -- a designated trunk group that
2 would route that call for termination and we
3 would receive it at San Marcos and terminate it
4 Q Could you -- could we step back -- a
5 little more detail? When you say "switch," the
6 Southwestern Bell switch in Lockhart?
7 A The call would be processed from the
8 Lockhart -- the Lockhart switch, in my
9 explanation here, I'm not certain how
10 Southwestern Bell has their network set up. I
11 don't know if that EICS -- I'm not with
12 certainly know whether that EICS trunks go
13 through a tandem to us or whether they come
14 through some facilities directly to us. I'm not
15 aware of that.
16 Q Okay. Perhaps that's another question
17 I could ask Mr. Stewart. That's it. Thank
18 you very much. Appreciate it, Mr. Barker.
19 JUDGE WALSTON: Do you have any
20 redirect?
21 redirect?
22 MS BROWN: Just a little bit.
23 REDIRECT EXAMINATION
24 BY MS. BROWN:
25 Q Mr. Barker, I have a few questions on
1 redirect
2 A Yes, ma'am
3 Q You were asked some questions about
4 CenturyTel Internet services. Can you tell us
5 in how many states does CenturyTel offer some
6 sort of communication service?
7 A I believe that 22 or 23 states -- I
8 think as of today it's 22 states.
9 Q And does the Web page -- is that a
10 general Web page for all 22 state operations?
11 A Yes. It's designed to service the
12 company across -- nationally.
13 Q Okay. Do you know with respect to the
14 data-up services shown for the CenturyTel
15 Internet service provider -- do you know what
16 types of agreements the Internet service
17 provider has with CenturyTel of San Marcos or
18 other local exchange carriers to be able to
19 offer the calling scope that's represented on
20 your Web page?
21 A No, I do not. I've never been involved
22 in any of the Internet companies' contracts

23 Q Okay. Could they, in fact, have a
24 reverse billing arrangement for some of those
25 calls?
1 A I guess -- just a moment. In my
2 opinion, no, they could not.
3 Q Okay. Would there be other forms of
4 agreement they could enter into with local
5 exchange carriers to avoid toll calls to the
6 users calling those particular numbers?
7 A Yes, I would think that there are --
8 that there could be.
9 Q Would the same be true with respect to
10 CenturyTel Paging services -- that they could
11 enter into agreements with CenturyTel of San
12 Marcos or other local exchange companies to
13 offer a wide calling scope without the payment
14 of toll charges by the end user?
15 A If CenturyTel is a paging carrier and
16 they seek -- yes. The answer would be that they
17 could have different -- they would have
18 different arrangements for establishing local
19 calling.
20 Q Okay. If ASAP Paging -- are there
21 options available to ASAP Paging whereby calls
22 between Fentress, Kyle and San Marcos would be
23 treated as local calls?
24 A Yes.
25 Q What are those options?
1 A The EICS trunk facilities was an
2 option.
3 Q Are there others?
4 A ASAP could, if they chose to, establish
5 interconnection facilities directly to
6 CenturyTel of San Marcos.
7 Q And when you say "interconnection
8 facilities directly to CenturyTel of San
9 Marcos," do you mean that they would locate a
10 facility in San Marcos whereby calls to that
11 facility in San Marcos would be a local call?
12 A Yes.
13 Q And if ASAP located a switch in
14 San Marcos and had a San Marcos local number,
15 would it have the same calling scope for EICS as
16 any other subscriber in San Marcos?
17 A Yes.
18 Q Mr. McCollough asked you a question
19 about the Trunk group AM 384192. Is that a
20 Southwestern Bell trunk group?
21 A Yes.
22 Q Do you know whether that trunk group is
23 associated with toll or EAS -- EICS facilities?
24 A No, ma'am, I do not.
25 Q Does CenturyTel charge toll for calls
1 between a San Marcos end user and an Austin end
2 user?
3 A Yes, ma'am.
4 Q If a paging company in San Marcos --

5 let me -- if a customer of a paging company in
6 San Marcos has an Austin telephone number
7 assigned to the pager and does not have a
8 reverse billing agreement, what would -- would a
9 toll charge be assessed to calls placed to that
10 pager?

11 A Yes, ma'am.

12 Q Does CenturyTel of San Marcos, Inc
13 have the obligations of a common carrier to
14 treat all like customers in like fashion?

15 A Yes, ma'am

16 Q Is that one of the reasons why
17 CenturyTel believed that they had to terminate
18 the arrangements, whereby calls to ASAP's number
19 over toll facilities were not being billed the
20 access charge?

21 A That was a consideration

22 Q If other paging companies have to pay
23 toll for that same service, would it be
24 discriminatory to treat ASAP differently?

25 MR McCOLLOUGH Objection Calls
0192

1 for a legal conclusion

2 JUDGE WALSTON: It's overruled

3 COURT REPORTER What was his

4 answer?

5 BY MS BROWN:

6 Q Could you give us your answer again,
7 please, Mr Barker?

8 A "Yes, ma'am."

9 Q You were asked the question, "Does ASAP
10 have control over how CenturyTel routes calls to
11 Southwestern Bell?" Do you recall that
12 question?

13 A Yes, ma'am

14 Q Can you explain in context -- I believe
15 your answer was, "no " Will you explain that in
16 context of your understanding of the question?

17 A My understanding of the question was,
18 does a CenturyTel customer control the trunk
19 group that CenturyTel routes traffic over to
20 Southwestern Bell The customer doesn't control
21 that We control the designation of trunk
22 groups

23 Q Does a customer such as ASAP have
24 options, such as reverse billing or establishing
25 ELCS connectivity or establishing a local

0193
1 presence, in terms of how it arranges its
2 network?

3 MR. McCOLLOUGH Two objections
4 First of all, it is multifarious Second of
5 all, it is leading Third of all, it assumes
6 that ASAP is a quote customer ASAP is a
7 carrier, a co-carrier, a peer -- not a customer
8 of CenturyTel

9 JUDGE WALSTON What is your
10 response?

11 MS BROWN Your Honor, I can
12 rephrase the question

13 JUDGE WALSTON Okay I don't
14 have an objection to the multi -- I mean, I
15 don't sustain your objection on the multifarious
16 part I think you can go ahead and ask him, but
17 charge it from a customer to a co-carrier

18 BY MS BROWN

19 Q Would a co-carrier, such as ASAP, be
20 able to choose of the options you've outlined
21 and that we've talked about how their calls are
22 routed?

23 A Yes, ma'am

24 MS. BROWN I have no further
25 redirect, Your Honor

0194

1 JUDGE WALSTON Okay

2 Mr McCollough, do you have any questions based
3 on the redirect?

4 MR. McCOLLOUGH Yes, I do

5 RE-CROSS-EXAMINATION

6 BY MR McCOLLOUGH

7 Q Mr Barker, do you know what a 2/4
8 trunk is?

9 A No, sir, I do not

10 Q I want to ask you a question about --

11 MS BROWN One moment Do we

12 need to move the phone, Gary?

13 A It might be helpful Thank you

14 MR McCOLLOUGH Thank you

15 BY MR McCOLLOUGH:

16 Q Is CenturyTel or you alleging that
17 calls from Century users to ASAP's Lockhart NXX
18 are long distance because ASAP switch is in
19 Austin?

20 A No, sir, I don't think so

21 Q So you would agree with me that the
22 location of a switch really doesn't determine
23 the jurisdictional nature of a call Correct?

24 A That's probably true

25 Q Okay Regulators typically look to the
0195

1 origination and termination point of a call?

2 A Yes, sir

3 Q Okay Does the fact that ASAP has no
4 switch for telephone facilities in Lockhart lead
5 CenturyTel to assert that a call from San Marcos
6 to ASAP's Lockhart NXX is toll?

7 A No, sir, I don't believe so

8 Q When a CenturyTel user in San Marcos
9 dials -- well, prior to April 2nd, when a
10 CenturyTel user in San Marcos dials ASAP's
11 Lockhart number and it was for a paging customer
12 of ASAP who was physically located in San
13 Marcos -- do you understand the hypo?

14 A Yes, sir

15 Q Do you agree with me that the call both
16 originated and terminated in San Marcos?

17 A If a pager user had actually worn the
18 pager was in San Marcos also?

19 Q Yes, sir That's the hypothetical

20 A Give me a moment, please I'm

21 thinking To me, I think of the origination
22 being in San Marcos and the termination being
23 associated with the public-switched network,
24 which at that point would be in Austin
25 Okay Well, are you familiar with the
0196
1 cellular world, sir?
2 Cellular rule?
3 Q I'm sorry I said "cellular world."
4 but do you negotiate interconnect agreements
5 with cellular providers?
6 Yes, sir, I do
7 Okay Isn't it correct that most of
8 these interconnect agreements provide that
9 reciprocal compensation applies to the call
10 begins when the user is within the same local
11 calling area as the originating?
12 A Originates and terminates within the
13 same MTA? Is that what we're saying?
14 Yes, sir
15 Yes, sir
16 Okay And --
17 MS BROWN, your Honor, I believe
18 we are beyond the scope of my record
19 MR McCULLOUGH There were some
20 question about toll, and that's kind of what led
21 me down the path I was just trying to get some
22 understand of what termination is as it relates
23 to toll
24 MS BROWN Well, your Honor, I
25 think at this point the questions ought to be
0197
1 very strictly limited to the scope of the
2 redirect
3 JUDGE WALSTON I was about to
4 ask In fact, I was looking back at my notes
5 I think that is getting a little bit beyond
6 MR McCULLOUGH That's all right,
7 Your Honor I'll just quit at that point, and I
8 have no further questions
9 JUDGE WALSTON Okay
10 Mr Stewart, did you have anything else?
11 MR STEWART I hope one brief
12 question
13 RECCROSS-EXAMINATION
14 BY MR STEWART
15 Q Mr Barker, this is Roger Stewart Can
16 you hear me?
17 Yes, sir, I can
18 Okay Thank you I appreciate
19 Ms Brown kind of rehabilitating a question I
20 had earlier I believe she asked you something
21 about direct trunks, I guess, and maybe not
22 direct ELOS trunks but just direct
23 interconnection or direct trunks
24 I guess I'm trying to understand one --
25 possibly would be direct trunking between --
0198
1 and, of course, it's another question as to
2 whether ASAP would desire this -- a direct

3 connection or direct trunk group between
4 CenturyTel of San Marcos and the ASAP switch in
5 Austin?
6 Yes, sir They certainly could have
7 that
8 Is that one of the options that you
9 were mentioning earlier?
10 Yes, sir, it is
11 Q What -- now, what would be the nature
12 of the cost of such an arrangement?
13 A We would share the cost of termination
14 to a point within our exchange So ASAP would
15 need to arrange facilities within the exchange
16 area of CenturyTel
17 Q So, in other words, ASAP would have to
18 construct or arrange for construction of
19 facilities to the point -- until the trunk
20 groups are in CenturyTel's service area Is
21 that what you're saying?
22 Yes, sir
23 Q What would be the -- this may be
24 speculation I was just attempting to get some
25 sense of the order of magnitude of what this
0199
1 cost could be Would this be a one-time cost?
2 Would this be a -- I guess as to the -- as to
3 the -- would there be a meet point or
4 something -- you know, on either side of the
5 meet point, each party would incur its own cost?
6 A There would be a sharing of cost The
7 cost in the exchange would be priced --
8 typically priced out of one of our tariffs, and
9 then there would be a sharing of cost Over
10 that local interconnection facility,
11 typically, it would involve a
12 discussion that might include that for
13 CenturyTel originated traffic over that facility
14 that there would be no charge for facilities.
15 That would be an item of discussion.
16 For non-CenturyTel originated traffic that might
17 come over those facilities for termination,
18 then the pricing carrier would be -- CenturyTel
19 would be entitled to some compensation there
20 So there would be a sharing of cost
21 Okay. I've got an idea and maybe a
22 better way to get a general sense of this
23 Would -- in your opinion, would ASAP incur more
24 cost through the reverse billing arrangement or
25 through the costs it would incur for such direct
0200
1 trunking, and let's say assume the traffic
2 levels of the last several months prior to
3 April 2?
4 A The only measurement I have to -- as a
5 point of reference, sir, is a general
6 understanding of the billing that has been
7 applied to the one prefix that I'm aware had
8 reverse billing
9 If the traffic is very low -- in other
10 words, there's not many people calling the

11 number with reverse billing, it would be cheap.
12 So as the traffic builds at some point, then it
13 becomes -- I mean, generally -- I'm not saying
14 that this applies to ASAP -- but, generally,
15 then it becomes more justifiable to think in
16 terms of having some direct interconnection
17 facilities

18 There may be also some other criteria
19 that the paging carrier might want to consider
20 rather than cost, you know, maybe

21 Q Okay. I think I'll maybe wait for
22 Mr Navarrette, but I appreciate your efforts to
23 struggle to answer my inartful questions

24 MR STEWART. That's all Thank
25 you

0201

1 JUDGE WALSTON Any reason
2 Mr. Barker can't be excused?

3 MS BROWN I think we could
4 excuse Mr Barker.

5 JUDGE WALSTON Mr. Barker, thank
6 you for your cooperation. You're free to go.

7 WITNESS BARKER: Thank you very
8 much.

9 JUDGE WALSTON Why don't we go
10 off the record.

11 (Brief recess)

12 JUDGE WALSTON We'll go back on
13 the record at this time Ms Brown, you can
14 call your next witness

15 MS BROWN I would call Mr John
16 Navarrette

17 JOHN NAVARRETTE
18 having been first duly sworn, testified as
19 follows

20 JUDGE WALSTON Will you state
21 your full name and spell it for us, please?

22 WITNESS NAVARRETTE John
23 Navarrette, N-a-v-a-r-r-e-t-t-e

24 JUDGE WALSTON Okay Thank you,
25 Mr Navarrette Ms Brown, you can proceed.

0202

1 MS BROWN Thank you, Your Honor
2 DIRECT EXAMINATION

3 BY MS BROWN

4 Q Mr Navarrette, can you state your
5 position with CenturyTel of San Marcos?

6 A Yes I am the General Manager for the
7 Texas and Louisiana telcos

8 Q Okay Does that include more than just
9 CenturyTel of San Marcos?

10 A Yes, Port Aransas, Lake Dallas and 20
11 other companies in Louisiana that I don't think
12 you want me to name all of them

13 Q Okay No, sir Thank you Is your
14 office located in San Marcos?

15 A Yes, it is

16 Q And are you a long-time resident of San
17 Marcos?

18 A Yes.

19 Q When did the ASAP Paging issue first
20 come to your knowledge?

21 A Back in the early fall, around October

22 Q Okay Can you explain how it came to
23 your knowledge?

24 A The local ISP had called in and said he
25 needed to verify three NXXs that were supposed

0203

1 to be local calling that were not local calling

2 So I requested that a trouble ticket be
3 turned into our central office manager to test

4 the numbers

5 Q And what did you discover as a result
6 of that inquiry?

7 A That the calls were not being processed
8 as a local call They were being processed as a

9 toll call -- a 1-plus call

10 Q And what steps did you take at that
11 point in time?

12 A I had asked the central office manager
13 to get with Gary Barker, our carrier relations
14 manager -- or industrial relations manager -- to
15 verify whether we had an agreement of any kind,
16 whether it be a reverse billing or an agreement
17 with ASAP Paging for that to be local calling

18 Q Were you able to determine that these
19 numbers were assigned by the LERG to ASAP
20 Paging?

21 A Yes

22 Q And is the correspondence that's been
23 marked as ASAP Exhibit 6 the correspondence that
24 followed from that inquiry that began in the
25 fall that you just described?

0204

1 A Yes

2 Q Are there other paging customers with
3 whom CenturyTel of San Marcos has reverse
4 billing agreements?

5 A Yes, ma'am

6 Q Are there any other customers for whom
7 CenturyTel of San Marcos is completing calls
8 over the toll network and not billing associated
9 toll or access charges?

10 A Not that I'm aware of

11 Q Did CenturyTel of San Marcos attempt to
12 complete the calls to the three prefixes over
13 the ELCS trunking between CenturyTel of San
14 Marcos and Southwestern Bell?

15 A Yes, we did

16 Q And what was the result of that
17 attempt?

18 A We got what we call a "reorder" or a
19 "fast busy," which means no completion

20 Q Did you route those calls the same way
21 you route every other ELCS call?

22 A Yes

23 Q When ELCS is established and the
24 terminating exchange is owned by a different
25 company than your company, what is the normal

0205

1 procedure for how that ELCS service is provided?
 2 A It's provided over a two-way ELC trunk
 3 group. In our case, all the traffic in San
 4 Marcos is at the meet point with Southwestern
 5 Bell.
 6 Q Okay. Describe what facilities
 7 CenturyTel furnishes in connection with ELCS
 8 exchange, or how far do your facilities extend?
 9 A Yes, we have a fiber facility that we
 10 meet Southwestern Bell with at our boundary,
 11 which is the Blanco River in San Marcos
 12 after it reaches Southwestern Bell facility at
 13 that point?
 14 Q Do you know what happens to the call
 15 after it reaches Southwestern Bell facility at
 16 that point?
 17 A No, I don't.
 18 Q Okay. Have you ever had any other
 19 problem terminating ELCS calls over those
 20 facilities?
 21 A No, we have not.
 22 Q Can you explain how you route intrastate
 23 toll?
 24 A It goes over a toll facility or toll
 25 trunks -- as synonymous for me -- by the 1-plus
 26 dial and puts it on a certain trunk group to the
 27 Southwestern Bell meet point where they take it
 28 into the Southwestern Bell tandem.
 29 Q Okay. And as the call -- does the
 30 CenturyTel switch send information -- the area
 31 code and the number -- let me say that again.
 32 Does the CenturyTel switch send all 10 digits to
 33 your connecting company whether it's an ELCS
 34 call or a toll call?
 35 A Yes.
 36 Q Do you determine how the Company to
 37 whom you pass off that traffic then switches or
 38 terminates it?
 39 A No.
 40 Q Does San Marcos have any objection to
 41 completing these calls to the 512 384 prefix
 42 over ELCS trunks?
 43 A No, they don't.
 44 Q The problem is that it doesn't work at
 45 this point?
 46 A That's correct.
 47 Q Does CenturyTel provide paging in San
 48 Marcos?
 49 A CenturyTel of San Marcos?
 50 Q Of San Marcos.
 51 A No.
 52 Q Is that a discrepancy on your parent
 53 company Web page?
 54 A Well, that's the parent company and its
 55 affiliate. An affiliate company provides the
 56 paging. They resell PagerNet's pagers -- our
 57 security company does, which is an affiliate
 58 But the telco -- the ILEC -- does not provide
 59 paging service. We sold out paging license in

9 the early '90s.
 10 Q Okay. Do you know whether CenturyTel
 11 of San Marcos has reverse billing agreements
 12 with other paging companies for traffic
 13 originating from the San Marcos exchange?
 14 A Yes, we do.
 15 Q Can you -- first, is that confidential
 16 information who those carriers would be? Let me
 17 ask you this -- well, I guess I can't -- I just
 18 have to ask it that way.
 19 A Okay. I'm aware of one paging company
 20 that I do have a reverse billing agreement with.
 21 It's called "Advanced Paging." 230 is their
 22 exchange that they asked that it be bought down,
 23 and we have a reverse agreement with -- reverse
 24 billing agreement with.
 25 Q Okay. Would you charge ASAP Paging the
 26 same rate you charge other paging carriers under
 27 a reverse billing agreement?
 28 A Whatever our stated tariff would be is
 29 what we would charge. It changes from year to
 30 year.
 31 MS BROWN Your Honor, that's all
 32 I have.
 33 THE COURT: Okay.
 34 MR. MCCOLLOUGH? Thank you.
 35 BY MR. MCCOLLOUGH:
 36 Q Do you know what a 2/8 trunk group is?
 37 A No, sir.
 38 Q You never heard of anybody -- I'm
 39 sorry, 2/6.
 40 A No.
 41 Q No? Do you know what SMT designates
 42 its ELC trunks as or what its circuit ID numbers
 43 or trunk ID numbers are?
 44 A No, I don't.
 45 Q Okay. Isn't it correct that Century
 46 has to program its switch so that it routes
 47 various types of calls to various trunk groups?
 48 A It is my understanding we have to
 49 translate the number in order to send it to the
 50 route -- correct route. That is correct.
 51 Q So if a user in San Marcos were to dial
 52 a number that's not a CenturyTel San Marcos
 53 number, your switch screens the originating NXX
 54 and the terminating number and makes the
 55 decision at the local switch level which trunk
 56 group to send it to. Correct?
 57 A That is correct.
 58 Q Now, I believe you testified that there
 59 is -- well, either you testified -- are there
 60 ELCS trunks between Century and San Marcos -- I
 61 mean, Century and SMT?
 62 A Yes.
 63 Q It's been a long day. I'm sorry.
 64 A That's okay. Yes.

17 Q When there is an ELCS call, your switch
18 has to recognize it as such, doesn't it?
19 A Yes
20 Q And it has to know what trunk group to
21 put it on?
22 A Yes.
23 Q If it's a Lockhart number, it has to go
24 -- it has to go to a trunk group -- the ELCS
25 trunk groups?

0210

1 A That's correct
2 Q And then you pass it on down the road
3 to Bell. Right?
4 A That is correct
5 Q So at your end, you have a circuit ID
6 number or trunk ID number for ELCS trunks with
7 Southwestern Bell, don't you?
8 A Yes I'm assuming I don't know I
9 would have to ask the central office manager,
10 but I understand that, yes, we have a circuit ID
11 for every trunk or every circuit that comes
12 through San Marcos or leaves San Marcos
13 Q Is it your testimony that CenturyTel
14 initially tried to route ASAP's Lockhart calls
15 to ASAP's Lockhart NXX over that particular
16 trunk group?
17 A Over the ELCS?
18 Q Yes, sir
19 A Yes.
20 Q When you experienced or when Century
21 discovered that there was a reorder or fast
22 busy, did you contact SWBT to find out what the
23 problem was?
24 A It's my understanding that the central
25 office tech called the Lockhart technician that

0211

1 it wasn't completing, and the Lockhart
2 technician said it was not in the ELCS group
3 Q The Lockhart --
4 A So, yes, we did contact Southwestern
5 Bell.
6 Q Wait. But you contacted the Lockhart
7 technician. Was that a Southwestern Bell
8 employee in the --
9 A That was a Southwestern Bell --
10 JUDGE WALSTON Don't talk over
11 each other. The Court Reporter has to get you
12 down
13 BY MR McCOLLOUGH:
14 Q When you say that Century -- a person
15 at Century called the Lockhart technician, a
16 person at Century called a SWBT employee in the
17 Lockhart SWBT end office?
18 A Yes
19 Q Okay Did any Century representative
20 attempt to speak with any SWBT representative
21 that would have knowledge about the tandem?
22 A No.
23 Q These ELCS trunks between Century and
24 SWBT actually go to Greenwood, don't they --

25 SWBT's Greenwood exchange?

0212

1 A That's my understanding
2 Q And they are switched there by that
3 tandem, aren't they?
4 A I hand it off to Southwestern Bell We
5 think that, yes, it would be switched at that
6 tandem.
7 Q So it's not your testimony that there
8 is a complete dedicated unswitched path between
9 Century and San Marcos and SWBT's Lockhart end
10 office? Instead, there is a tandem switching
11 event that occurs in the middle Right?
12 A That's my understanding, yes
13 Q So even though your understanding is
14 that there is a tandem switching event that
15 occurs at the SWBT tandem, all you did was call
16 the Lockhart technician and not the tandem
17 technician Correct?
18 A That is correct
19 Q What did you-all do in San Marcos --
20 what did you-all do on April 2nd so that the
21 users had to begin to dial 1-plus for ASAP's
22 Lockhart NXXs?
23 A We put them back on the original toll
24 trunks -- or translated them to the original
25 toll path

0213

1 Q Okay So before that time, they were
2 not on the original toll path?
3 A Yes, they were.
4 Q Well, then, how did you have to change
5 it if they were on the toll path and they stayed
6 on the toll path?
7 A They were installed in error due to an
8 ISP complaint to 7-digit dialing
9 Q I'm not asking whether they were
10 installed in error I'm saying -- were they on
11 the toll trunks before April 2nd?
12 A Yes
13 Q And they were on the toll trunks after
14 April 2nd?
15 A Yes
16 Q Okay So that's not a change Right?
17 A Yes, that is not a change
18 Q So what was changed?
19 A The translation path to dial 1-plus for
20 a toll call
21 Q Okay So the single thing that
22 occurred was that you instructed your switch to
23 no longer allow 7-digit dialing and to, instead,
24 give the message to users that the call would
25 not complete?

0214

1 A That's correct
2 Q If there is merely some technical issue
3 here -- something, perhaps, as between SWBT and
4 its tandem and Century at its tandem in San
5 Marcos that, if changed -- if a fix would allow
6 these calls to route over the ELCS facilities,

7 would Century agree to do so for ASAP's numbers?
8 A Yes
9 Q Okay You mentioned that there's some
10 other paging carriers with reverse billing Do
11 you have any paging companies that don't have
12 reverse billing? Do you have any that don't?
13 A I do not know that
14 Q You might, though Right?
15 A It's possible
16 Q Okay Those paging carriers that have
17 reverse billing, do any of them have Lockhart
18 numbers?
19 A I'm not aware of it
20 Q Okay. Do any of them have numbers for
21 a rate center other than San Marcos but which is
22 extended local to San Marcos?
23 A I'm not aware
24 Q Do any of -- actually, you just
25 testified there was one Is there more than
0215 one?
1 A What's that?
2 Q A paging carrier that has --
3 A I'm only privy to one that I personally
4 know about
5 Q I'm sorry My prior questions were in
6 the plural, and I guess they should have been --
7 does this paging customer have a San Marcos NXX?
8 A No
9 Q It's an Austin NXX, isn't it?
10 A Yes
11 Q If a paging customer had a San Marcos
12 NXX, would it be necessary for there to be a
13 reverse billing arrangement for calls to that
14 paging carrier from users in San Marcos?
15 A No.
16 Q Do you have any reverse billing
17 arrangements with any customers that are not
18 carriers?
19 A I'm not aware of any
20 MR McCOLLOUGH I pass the
21 witness.
22 JUDGE WALSTON Mr Stewart?
23 MR STEWART Thank you, Your
24 Honor
25
0216 CROSS-EXAMINATION
1 BY MR. STEWART
2 Q Mr Navarrette, Roger Stewart with the
3 Commission Staff
4 A Yes, sir
5 Q Let me see if I can just draw a few
6 things together and see if I understand You
7 referred to Advanced Paging, I believe it was?
8 A Yes
9 Q And you said the NPA NXX was 512 230?
10 A 230
11 Q And it's your understanding that that
12 512 230, according to the LERG, is in the Austin
13 exchange?
14

15 A Yes
16 Q And would it be associated with
17 Advanced Paging according to the LERG? Do you
18 know?
19 A Yes
20 Q Okay Are you aware if CenturyTel has
21 received any calls from CenturyTel subscribers
22 about this matter?
23 A About what matter?
24 Q About -- I'm sorry About changes
25 since April 2 regarding calls to 512 384?
0217
1 A Yes
2 Q And could you tell me about the calls
3 that CenturyTel has received?
4 A Okay They were from the ISP -- from
5 the ISP and the ISP customers, which are also my
6 customers dialing that number
7 Q These end users for the ISP who also
8 have CenturyTel local service?
9 A Yes, sir
10 Q Are they -- the ISP end users, are
11 they -- is that ISP that they are end users for,
12 is that ISP a customer of CenturyTel in any way
13 for any services that you know of?
14 A Yes, some were They were dial-tone
15 customers Is that what you were referring to?
16 Q Yes And before April 2 or after April
17 2 or both, as far as you know, being subscribers
18 for dial-tone -- the ISPs being dial-tone
19 subscribers to CenturyTel?
20 A Yes, both
21 Q Okay Thanks Who authorized -- or
22 what was the highest level, I guess, so to
23 speak, or who authorized the decisions that kind
24 of culminated in the changes on April 2? Who at
25 CenturyTel?
0218
1 A I did
2 Q That would be you?
3 A Yes
4 Q Would you have authorized those changes
5 if, to your knowledge, ASAP did not have any
6 subscribers that were ISPs? Let me restate
7 that
8 A Yeah.
9 Q If ASAP's subscribers were -- if you
10 had no awareness of the nature of ASAP's
11 customers -- or if it was your understanding
12 that ASAP's customers were all, shall we say,
13 paging or paging plus voice mail or paging plus
14 e-mail customers, would you have made the
15 decision that resulted in the change on April 2?
16 A Yes
17 Q So it's irrelevant to you what the
18 nature of ASAP's subscribers are as to the
19 decisions that resulted on what happened on
20 April 2?
21 A Yes
22 Q I'm trying to cut through my questions

23 I think Mr. McCollough may have asked a few of
24 the questions I was going to ask
25 Mr. Navarrette, what is the -- is there

0219

1 an interconnection agreement between CenturyTel
2 and Southwestern Bell that governs matters such
3 as ELCS between the Lockhart exchange and the
4 San Marcos exchange?

5 A I'm not aware

6 Q Is there a written interconnection
7 agreement between Southwestern Bell Telephone
8 and CenturyTel that you know of?

9 A I'm not aware of that

10 Q Do you know if there are -- are you
11 aware if there are any CLECs that have NXX codes
12 in Lockhart or Kyle or Fentress?

13 A I don't know what CLECs have

14 Q Okay.

15 A I just .

16 Q Are you familiar with the Texas
17 Commission ELCS rules or the provisions of the
18 Public Utility Regulatory Act regarding ELCS?

19 A As to what?

20 Q Just generally speaking

21 A Yes

22 Q Okay.

23 MR. STEWART: I think that's it

24 Thank you, Mr. Navarrette

25 JUDGE WALSTON: Ms. Brown, do you

0220

1 have any redirect?

2 MS. BROWN: I have no redirect

3 JUDGE WALSTON: Mr. Navarrette,

4 thank you. You got off easy. Do you have any

5 other evidence you wish to offer, Ms. Brown?

6 MS. BROWN: That is the conclusion

7 of my direct case. Thank you

8 JUDGE WALSTON: Okay.

9 MR. MCCOLLOUGH: I have no

10 rebuttal.

11 JUDGE WALSTON: I was going to see

12 if Mr. Stewart was going to present anything

13 MR. MCCOLLOUGH: Then I take that

14 back.

15 MR. STEWART: Commission Staff
16 would like to call Ms. Cobb of SBC and
17 Mr. Etzler of ASAP, but it appears they are
18 probably not going to be available at this hour
19 So we will have no witnesses

20 JUDGE WALSTON: Okay. Had you
21 made any arrangements to contact them? Is it
22 essential that we recess or come back tomorrow?

23 MR. STEWART: I apologize. I

24 should have laughed when I said --

25 JUDGE WALSTON: Okay. I wasn't

0221

1 sure if you were serious or not. So I assume

2 you still have no rebuttal?

3 MR. MCCOLLOUGH: I still have no

4 rebuttal

5 JUDGE WALSTON: Why don't we go

6 off the record just a minute?

7 (Brief recess)

8 JUDGE WALSTON: We'll go back on

9 Mr. McCollough, go ahead

10 OPENING ARGUMENT ON BEHALF OF ASAP PAGING, INC.

11 MR. MCCOLLOUGH: Your Honor, we

12 have given you previously a memorandum of

13 authority. It contains certain factual

14 assertions that we anticipated to get in the

15 record. I believe we have

16 I'd like to follow up on three specific

17 things and it won't take me very long. It

18 appears that the ELCS trunks in issue here do,

19 in fact, go through Southwestern Bell's tandem

20 And as Mr. Barker indicated, it would

21 be technically feasible and possible for SWBT to

22 then hand the calls to ASAP Paging at its switch

23 in Austin.

24 In some respects, it sounds to me like

25 we just have a problem where the technical folks

0222

1 aren't talking to each other, because Century

2 has also said now in writing and in testimony

3 that if the calls would route over the ELCS

4 trunks then they would put them on ASAP

5 witness Gaetjen testified that he thinks he's

6 done everything he can do to make it work

7 He has given the information to Bell

8 He has given the information to Century. And so

9 we either have a problem where there's just some

10 technical detail that's not been put in place so

11 that the calls will route -- at one end or

12 another. We have our opinion about where it is,

13 but it's possible it's at Bell or it's possible

14 it's at Century, and that just needs to be done

15 so that the call is routed, and if so, then the

16 issue goes away.

17 What we do know, however, is that

18 Century took the active step of reprogramming

19 its end office switches, to no longer allow the

20 calls to be dialed, however they are routed, as

21 1-plus. We know that. They took the unilateral

22 act to do so.

23 And one kind of wonders why they might

24 have taken that step. We also know that whether

25 it's a different CenturyTel entity, Century

0223

1 sells -- a Century entity sells paging services

2 and is, therefore, in direct competition with

3 ASAP. We also know that a Century entity

4 provides connectivity to ISPs, and there has

5 been some discussion of the ISP that was behind

6 ASAP's switch

7 So in that sense, there is competition

8 between them. We think that regardless of

9 motives, there is certainly an impact -- a

10 competitive impact, and we think that it

11 needs -- Century needs to do what it can do --

12 whatever it can do, whether it's working with

13 the right technician at Southwestern Bell or
14 whether it is just making the executive
15 decision, they need to see to it that ELCS calls
16 route over the ELCS trunks
17 if that happens, then ASAP Paging will
18 not have to pay reverse billing. It should not
19 have to pay reverse billing. It should not have
20 to directly interconnect. It should not have to
21 enter into any written agreements with
22 CenturyTel.
23 And as we demonstrated in our brief,
24 there are none that are required by law. We
25 just want these calls to route, we have done
0224 everything we could to make it happen. Now,
1 it's the telephone company's turn, and they have
2 yet to do so at our request.
3 They now need to receive an order from
4 Your Honor requesting them to do so, and we ask
5 that you grant it.
6 JUDGE WALSTON Okay. Ms. Brown?
7 CLOSING ARGUMENT ON BEHALF
8 CENTURYTEL OF SAN MARCOS, INC.
9 MS. BROWN Your Honor, I would
10 like to clarify that last statement and make
11 sure that we understand exactly what emergency
12 relief ASAP is asking Your Honor to award them,
13 because I think it's very important
14 As I read the pleadings, they want you
15 to obligate CenturyTel to continue to route
16 these calls over toll trunks. We've said from
17 the beginning that we would provide these calls
18 over the ELCS trunks, and that is ASAP
19 Paging's obligation to make whatever
20 arrangements necessary at the Southwestern Bell
21 end of the call so that the ELCS facilities work
22 at that end of the call.
23 And we don't know whether they have --
24 whether there is any disagreement between
0225 Southwestern Bell and ASAP over that issue, but
1 we're not the one that has to resolve that
2 issue. And so it -- I think it's very important
3 to look very specifically at what it is that
4 ASAP Paging is asking you to do in the interim
5 order.
6 CenturyTel will route those calls over
7 ELCS trunks, but we cannot get in the middle of
8 the agreements or arrangements between
9 Southwestern Bell and its customer in order to
10 mandate to Southwestern Bell that those calls
11 terminate at the Lockhart end. That's not our
12 responsibility. Mr. McCollough has provided no
13 authority where that is CenturyTel's
14 responsibility at that end of the call.
15 I have not -- I've only, as you know,
16 been presented with Mr. McCollough's brief.
17 maybe five minutes ago. I understand it was
18 delivered to you before the hearing began this
19 morning. I would like the opportunity to

21 respond to that brief.
22 I know you've had it before you, and I
23 would like the opportunity, if you're going to
24 consider it, to provide a response. I have two
25 cases that I would like to present to you that
0226 are directed to the authority of the court to
1 award injunctive relief.
2 The first case, Galt Properties, Inc.
3 versus Main Laurentz & Co., is a case where the
4 court determined that the -- Court of Appeals
5 determined that the trial court erred in
6 granting injunctive relief because the harm at
7 issue was one that was directly quantifiable.
8 If you look at the top of Page 2 in the
9 right-hand column, I will just read to you here
10 "An, irreparable injury" is stated to be an
11 injury of such nature that the injured party
12 cannot be adequately compensated therefore in
13 damages or that the damages which result
14 therefrom cannot be measured with any pecuniary
15 standard" -- citing Lowe, Texas Practice
16 standard. In this case, the appellant, which
17 would be in the position of CenturyTel here,
18 never refused to provide the requested service
19 of heating and cooling the building. This was
20 a landlord/tenant dispute. The landlord was the
21 appellant. The tenant believed the agreement
22 provided for after-hours heating and cooling.
23 If it had refused service, there would
24 have been no adequate remedy at law and an
25 injunction could have been proper. But,
1 instead, it requested payment of \$10.34 cents per
2 hour for such service. Appellant by its reply
3 to the request for service established a finite
4 measure of damages based upon the amount of
5 service requested. We believe the appellee --
6 the tenant -- "could have requested the service
7 and sued for the recovery of the sums it was
8 requested to pay."
9 "A recovery of such payment would be an
10 adequate remedy. There's no contention that
11 appellees are insolvent or unable to pay any
12 judgment rendered against them. Certainly any
13 recovery could be offset against the current
14 rent for the leased premises. Thus, an adequate
15 remedy at law did in fact exist and the
16 extraordinary remedy of an injunction should not
17 have been granted."
18 That case was then cited in the later
19 case of City of Austin v. Schonfeld. And, here,
20 was then the City of Austin, could terminate
21 service to a customer.
22 And if you look at page -- the third
23 page of that decision at footnote 3, the Austin
24 Court of Appeals says that, "Appellant claims

3 that appellees have an adequate remedy at law
4 and that they could pay the amount in disputed
5 and then sue for the recovery. Appellant
6 mistakenly relies on Gihls Properties versus
7 Main LaFrentz. In that case" --

8 JUDGE WALSTON You're at Footnote
9 3?

10 MS. BROWN I'm sorry Headnote
11 3. I beg your pardon. "Appellant claims that
12 appellees could have an adequate remedy at law
13 and that they could pay the amount in dispute
14 and then sue for the recovery Appellant
15 mistakenly relies on Gihls Properties, Inc
16 versus Main LaFrentz & Co. In that case, a
17 tenant and landlord had a dispute over the cost
18 of heating and air conditioning after regular
19 business hours.

20 "The landlord offered to supply such
21 services if the tenant would pay \$10.34 an hour
22 for them. In reversing the trial court's
23 issuance of an injunction, the court stated the
24 tenant could have paid the amounts demanded
25 under protest and sued for recovery of the sums

0229
1 paid."

2 And then it says, "Appellant in this
3 case are paying for electric service received
4 after July 1980," which was the date of the
5 dispute. "There is no indication that appellees
6 will not continue to pay for the services they
7 receive in the future. The tenant in Gihls
8 refused to pay for future services. The issue
9 in the case at bar is not whether appellees will
10 pay for the services to be furnished, but
11 whether they are liable for services originally
12 billed to a third party."

13 And then it says, "Paying a third
14 party's debt in order to prevent termination of
15 service would not result in an adequate remedy
16 at law." But I think what the court there did
17 recognize is that in Gihls where the issue is
18 payment for future services, and, here,
19 CenturyTel is not demanding payment for what
20 they believe to have been the toll service
21 rendered in error, but payment for future
22 services that places ASAP in the same position
23 as any other similar customer, and that is why
24 we believe that if -- ASAP has two remedies

25 One would be -- and CenturyTel will do

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1 this -- to put the service over the ELCS trunks
2 The other option is that ASAP, if there is a
3 problem with Southwestern Bell doing that, that
4 ASAP enter into a reverse billing arrangement,
5 pay the charges pending the dispute and settle
6 up when we know whether the Commission has any
7 problem with that sort of an arrangement.

8 So we think in both cases there are
9 adequate remedies at law here. Your Honor, I'll
10 also make one brief further comment. The best

11 we heard from Mr. Gaetjen as to the harm was
12 that there was a feeling that he might have 150
13 customers -- paging customers on those numbers, ---
14 but he didn't know for sure.

15 He indicated that there were sufficient
16 numbers available in the 512 2222 block which
17 does have LATA-wide calling that those customers
18 could be transferred there. The public interest
19 type of issues never got tied up to the 512 384
20 number. No one disputes that he provides
21 valuable services that can be of an emergency
22 nature.

23 We just don't have any testimony that
24 that's impacted in any significant way by the
25 dispute over the 384 number. We also had no

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1 testimony that this was going to put Mr. Gaetjen
2 out of business. And from the testimony we do
3 have, we know that this is one number out of 25
4 blocks of 10,000 numbers that serve his
5 customers. That's all I have, Your Honor.

6 JUDGE WALSTON Okay.
7 Mr. Stewart, do you wish to weigh in?
8 CLOSING ARGUMENT ON BEHALF OF COMMISSION STAFF
9 MR. STEWART Yes, Your Honor.

10 Thank you. Staff's not prepared to support the
11 position completely of either party.

12 Staff is disappointed that Southwestern
13 Bell has not been involved in a way that could
14 have significantly helped this, if parties had
15 worked together to try to resolve that, and,
16 perhaps, now they will have an opportunity to do
17 so very soon, I hope.

18 In the meantime, to the extent that
19 there are any public safety customers, the
20 allegations were -- the testimony was very vague
21 on that. So I don't know what to say to Your
22 Honor about that, although, of course, the
23 Commission would be very concerned if, in fact,
24 there are public safety entities that are losing
25 service as a result. Although, as I said,

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1 that's not clear.

2 The one area where Staff has seen a
3 possibility for some sort of distinction is --
4 as you may have guessed from the line of
5 cross-examination -- service to what appear to
6 be traditional paging subscribers versus
7 subscribers that are ISPs. I don't, right now,
8 have a proposal that I would offer to Your Honor
9 as a way to make that distinction in regards to
10 interim emergency relief, especially in light of
11 the testimony of Mr. Gaetjen that he -- he does
12 not appear to have a way to distinguish between
13 those customers in any meaningful way.

14 I don't know what the impact -- Staff
15 does not know, necessarily, what the impact
16 would be on CenturyTel or Southwestern Bell of
17 attempting to make that sort of distinction on
18 an emergency basis. Staff is not saying that

19 that's necessarily appropriate to do on a
20 permanent basis
21 In any event, Mr. Navarette testified
22 that this company would have taken the actions it
23 did regardless of the nature of ASAP
24 subscribers. Unfortunately, I don't know that
25 we have any more to add to that.
26
27 That will conclude our comments. Thank
28 you
29
30 JUDGE WALSTON Do you have any --
31 CLOSING ARGUMENT ON BEHALF OF ASAP PAGING, INC.
32 MR. MCCORD: I do I have
33 just a very brief closing
34 that the telephone companies always think that
35 other carriers are taking customers when the
36 telephone company is sending a call for
37 termination by another carrier
38
39 ASAP Paging is not Century's customer
40 for these NXXs, and it doesn't want to be
41 That's the problem here. Century is going
42 completely out of its way to make sure that
43 indeed, ASAP becomes a customer and pays money
44 to Century when no money is due
45 And to do that, they reprogram their
46 switch so that calls to ASAP's numbers have to
47 be dialed 1-puls and incur toll. Now, there was
48 testimony that pages are used in emergency
49 situations. It was directed testimony and it was
50 created testimony. It was also testimony that it was
51 people don't dial 1-puls to paging customers
52 There's
53 down significantly after April 2nd, which, of
54 course, completely corroborates the claim that
55 people don't use paging numbers if they have to
56 pay day toll. That's one of the reasons for
57 buy-down arrangements, because paging companies
58 need a way to find a way to allow calls to be toll
59 free. The point that ASAP has to submit, your
60 honor, however, is that these aren't toll calls
61 and there's nothing to buy down
62 Century is trying to make us buy down
63 something that we don't have to. I'm a little
64 concerned about the staff position on, perhaps,
65 segregating Internet traffic from paging
66 In the first place, there was no
67 testimony there has been no claim that ASAP
68 was acting in a discriminatory when it put
69 ISPs behind air switch. Nobody is saying that
70 why should we treat it differently?
71 Why should we have a class of users in San Jose
72 Internet service that your honor how
73 important Internet service is and, yet, we're
74 going to do something discriminatory Internet
75 calls?
76 I'm sorry. There's just no reason for

And then, finally, Ms Brown relies on some cases about electric service or utility service. Again, we're not receiving service from Century we are interconnecting indirectly for the purpose of traffic exchange. They have a duty to send these calls. They have a duty to provide toll parity. ELCS arrangements. We've clearly shown competitive harm here and, yes, Mr Gaston testified that he would likely exit the San Marcos markets if he had to pay reverse billing. There is no interconnect at the BDC rules for granting reverse billing. They have a duty to quantify damages or whatever these cases mean. I'm looking at the BDC rules on BDC Procedural Rule 22.78 "The presiding officer may take action when necessary to prevent imminent harm, prevent or mitigate imminent harm or injury to persons. Harm or injury shall also include actions affecting the ability of any provider to complete a call." Yes, it is true. Would route at I-pins is dialed. It does not prohibit us from connecting. It does, however, unless we pay reverse billing, mean we will not be able to compete and we have lost -- we expect we have lost business because of the significantly reduced traffic volume. The relevant rule, to the extent there are rules at the Commission, is 22.78. At least those considerations have been deemed appropriate. Now, we grant you that you can consider the public interest and encourage you to do so. So let's talk about this public interest for a second. Do we have public interest in competition for paying services? I think so. I think it's clear from the cases in the way that our society and government and Congress and the state legislatures have gone is that they want competition for telecommunications. Is it in the public interest to allow an incumbent telephone company to do so and to do so on a business as the flip of a switch? I think not. What are the harms to Century? It is not intended relief to be granted because calls are equated to be provided without dialing I-pins and without end users incurring toll charges? What's Century out? Nothing. They have said they will route them over the BDC trunks at they just figure out how to do it. There is no testimony of any cost change. They go over trunks that are probably on the same facility. It goes to the same place what are they out? Was there testimony from Century on the balance of harms issues that they are going to be out any money that they

9 are going to suffer any harm? No. Zero.
10 There is, therefore, no harm to Century
11 from granting the relief that has been
12 requested. What relief do we request? We
13 request that you issue an interim order
14 prohibiting CenturyTel requiring any users to
15 dial 1-plus -- 1-plus and area code in order to
16 reach these Lockhart numbers

17 We really don't care what facilities
18 they go over. Thank you.

19 JUDGE WALSTON: Okay. Ms. Brown,
20 I will give you have an opportunity to respond
21 to ASAP's memorandum if you think --

22 MS. BROWN: I was afraid of that.

23 JUDGE WALSTON: Can you give it to
24 me sometime tomorrow, do you think? You can
25 read through it. I think it talks about some of

0238 1 the same stuff that was contained in the cases
2 that were provided previously.

3 I don't know that it plows any new
4 ground. It made it a little clearer for me,
5 I'll be honest with you.

6 MS. BROWN: If I could have till
7 Wednesday, at least I could read it and get it
8 written. If the due date is tomorrow, I'm not
9 going to have an opportunity to get anything
10 written up.

11 MR. MCCOLLOUGH: Can I speak to
12 that? We've been out now since April 2nd and
13 we've been plowing around trying to get a
14 hearing. And, yes, the Commission and, yes,
15 SOAH has done everything they could to get us
16 one, but it's now the 15th.

17 JUDGE WALSTON: Hang on just a
18 minute. Do you want an opportunity to respond
19 to these cases or submit any other cases?

20 MR. MCCOLLOUGH: No.

21 JUDGE WALSTON: I know you-all
22 have been out. To be honest with you, even if
23 she gets it to me sometime tomorrow, I'm tied up
24 all day Wednesday with other hearings. I'm set
25 for the whole day. So it will be Thursday, but

0239 1 I do plan to address it on Thursday -- get to
2 this thing on Thursday.

3 So I'll give you till Wednesday, but
4 can you get it Wednesday, like, by noon?

5 MS. BROWN: Okay. Thank you.

6 JUDGE WALSTON: You don't have to
7 reply to these, but if you change your mind and
8 you want to, you can give me some kind of reply
9 by the same time.

10 MR. STEWART: Your Honor, I'm
11 sorry to interject. If, perhaps, if
12 Mr. McCollough allows and if you allow, I have a
13 very brief clarification to offer in response to
14 Mr. McCollough's rebuttal argument.

15 JUDGE WALSTON: Do you have any
16 problem with him --

17 MR. MCCOLLOUGH: If it's about the
18 Internet, I probably do.

19 MR. STEWART: It's just to
20 clarify.

21 MR. MCCOLLOUGH: If he wishes to
22 merely clarify their position, that's fine.

23 JUDGE WALSTON: Go ahead.

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1 CLOSING ARGUMENT ON BEHALF OF
2 COMMISSION STAFF (Cont'd)

3 MR. STEWART: Just to clarify that
4 Staff's position on distinguishing between
5 Internet subscribers and other one-way paging
6 subscribers was simply for the purpose of
7 emergency action -- the reason for that being
8 that it appears to Staff the number of minutes
9 associated with costs to ISPs would be far
10 greater than the number of minutes associated
11 with one-way paging, although there is not
12 evidence on that. I agree.

13 And, in addition, Staff believes that
14 calls to ISPs would not have the same public
15 safety aspects as calls to one-way paging
16 customers. And, again, Staff reiterates that it
17 sees that as a possible and helpful distinction,
18 although recognizing that Your Honor might be in
19 a difficult position to attempt to do so,
20 because I don't know that there's enough
21 evidence to support doing that technically.

22 JUDGE WALSTON: If Staff wants to
23 file any kind of memorandum, you can. I don't
24 that you would want to. I don't think you need
25 anything else after --

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1 MR. MCCOLLOUGH: No.

2 JUDGE WALSTON: Anything else from
3 the parties today? I do understand that this is
4 an urgent matter for ASAP Paging, and I do plan
5 to get to it as quick as I can, but I do have a
6 case -- another case tomorrow morning, and I've
7 got cases all day Wednesday.

8 But I will start addressing it on
9 Thursday and hopefully get something out by the
10 end of the day Thursday. Okay?

11 MR. MCCOLLOUGH: Thank you.

12 MS. BROWN: Thank you.

13 JUDGE WALSTON: We'll go off the
14 record at this time.

15 (Proceedings concluded. 8 00 p.m.)

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C E R T I F I C A T E

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2
3 STATE OF TEXAS)
COUNTY OF TRAVIS)

4
5 I, William C Beardmore, a Certified
6 Shorthand Reporter in and for the State of
7 Texas, do hereby certify that the
8 above-mentioned matter occurred as hereinbefore
9 set out

10
11 I FURTHER CERTIFY THAT the proceedings
12 of such were reported by me or under my
13 supervision, later reduced to typewritten form
14 under my supervision and control, and that the
15 foregoing pages are a full, true, and correct
16 transcription of the original notes

17
18 IN WITNESS WHEREOF, I have hereunto set
19 my hand and seal this 17th day of April 2002

20
21
22 William C Beardmore
23 Certified Shorthand Reporter
24 CSR No 918 - Expires 12/31/02
25 Kennedy Reporting Service, Inc
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
(FOR THE PUBLIC UTILITY COMMISSION OF TEXAS)

COMPLAINT, REQUEST FOR EXPEDITED)
RULING, REQUEST FOR INTERIM) SOAH DOCKET NO
RULING AND REQUEST FOR EMERGENCY) 473-02-2503
ACTION OF ASAP PAGING, INC) PUC DOCKET NO
AGAINST CENTURYTEL OF SAN) 25673
MARGOS, INC)

HEARING ON THE MERITS